

AMENDED IN SENATE FEBRUARY 18, 2010

CALIFORNIA LEGISLATURE—2009—10 EIGHTH EXTRAORDINARY SESSION

**SENATE BILL**

**No. 26**

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**Introduced by Senators Pavley, Cedillo, Hancock, *Padilla*, Steinberg,  
and Wolk**

February 4, 2010

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An act to add Division 16.2 (commencing with Section 26100) to the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Pavley. Energy: Property Assessed Clean Energy (PACE) financing.

(1) The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the authority to issue revenue bonds to provide industry with an alternative method of financing in providing and promoting the establishment of facilities utilizing alternative methods and sources of energy and facilities needed for the development and commercialization of advanced transportation technologies.

Existing law authorizes a public agency and a property owner to enter into voluntary contractual assessments to finance the installation of distributed generation of renewable energy sources, or energy or water efficiency improvements that are permanently affixed on real property.

This bill would require the authority to establish a Property Assessed Clean Energy (PACE) Reserve Program to assist local jurisdictions in financing the installation of distributed generation of renewable energy sources or energy or water efficiency improvements that are permanently

affixed on real property through the use of voluntary contractual assessment. The bill would establish the PACE Reserve Account within the California Alternative Energy Authority Fund and would transfer; ~~consistent with federal law, \$50,000,000 from moneys received pursuant to the federal American Recovery and Reinvestment Act of 2009 for energy-related purposes~~ *the Renewable Resource Trust Fund* into the account. The moneys in the account ~~are~~ *would be* continuously appropriated to the authority for the purposes of the PACE Reserve Program, thereby making an appropriation. The bill would require unencumbered funds in the account, on or after January 1, 2015, to revert back to the ~~originating fund~~ *Renewable Resource Trust Fund*. The bill would require the authority, on March 31, 2011, and annually thereafter, to submit to the Legislature, a report containing specified information regarding the implementation of the above provisions.

(2) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

Vote: ~~majority~~ <sup>2/3</sup>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 16.2 (commencing with Section 26100)  
2 is added to the Public Resources Code, to read:

3  
4 DIVISION 16.2. PROPERTY ASSESSED CLEAN ENERGY  
5 (PACE) FINANCING ASSISTANCE

6  
7 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

8  
9 26100. (a) The Legislature finds and declares all of the  
10 following:

11 (1) Property Assessed Clean Energy (PACE) financing has been  
12 pioneered by municipalities and counties in California as a way

1 for home and small business owners to finance voluntary *energy*  
2 *and water* efficiency and clean energy improvements.

3 ~~(2) PACE financing has gained interest from many other~~  
4 ~~municipalities and other states, including Colorado and New York,~~  
5 ~~that have also enacted enabling legislation.~~

6 ~~(3) Cities like San Francisco, San Diego, and the California~~  
7 ~~Statewide Communities Development Authorities (CSCDA) are~~  
8 ~~working to launch additional programs.~~

9 *(2) PACE financing was pioneered in the City of Berkeley, while*  
10 *the City and County of San Francisco, City of San Diego, City of*  
11 *Palm Desert, Sonoma County, and the California Statewide*  
12 *Communities Development Authorities (CSCDA) have already*  
13 *initiated or are working to launch additional programs.*

14 *(3) Seventeen other states, including Colorado and New York,*  
15 *have also enacted enabling PACE legislation.*

16 (4) PACE programs create new jobs, lower energy demand, and  
17 help spur new clean industries that will help grow the economy.

18 (b) It is the intent of the Legislature to assist local jurisdictions  
19 in financing the installation of distributed generation of renewable  
20 energy sources or energy or water efficiency improvements that  
21 are permanently fixed to real property through the use of voluntary  
22 contractual assessments.

23 (c) It is not the intent of the Legislature to create any debt,  
24 liability, or obligation on the part of the state in assisting local  
25 jurisdictions pursuant to this division.

26 26101. Unless the context otherwise requires, the definitions  
27 in this chapter govern the construction of this division.

28 26102. “Account” means the PACE Reserve Account  
29 established pursuant to Section 26140.

30 26103. “Applicant” means ~~a city, county, or joint power~~  
31 ~~financing authority~~ *public agency as defined in paragraph (3) of*  
32 *subdivision (c) of Section 5898.20 of the Streets and Highways*  
33 *Code.*

34 26104. “Authority” means the California Alternative Energy  
35 and Advanced Transportation Financing Authority established  
36 pursuant to Section 26004.

37 26105. “Property Assessed Clean Energy bond” or “PACE  
38 bond” means a bond that is secured by a voluntary contractual  
39 assessment on property authorized pursuant to paragraph (2) of

subdivision (a) of Section 5898.20 of the Streets and Highways Code.

26106. “PACE program” means a program established by a city, county, or joint power financing authority that is financed by an applicant that is financed by the PACE bond.

26107. This division does not create any liability or obligation upon the State of California and none shall be incurred by the authority beyond the extent to which moneys shall have been provided under this division. The authority shall not create any debt, liability, or obligation on the part of the State of California payable from any source whatsoever other than the moneys provided under this division.

#### CHAPTER 2. PACE RESERVE PROGRAM

26120. The authority shall develop and administer a PACE Reserve program to reduce overall costs *to the property owners* of PACE bonds issued by an applicant by providing a reserve of no more than 10 percent of the *initial principal* amount of the PACE bond.

26121. To qualify for assistance pursuant to this division, the PACE program shall require all of the following:

~~(a) Improvements financed by the PACE bond are performed by qualified contractors that are licensed by the Contractor State Licensing Board.~~

~~(b)~~

(a) The interest rate on the PACE bond does not exceed a percentage as determined by the authority to be appropriate.

~~(c)~~

(b) Minimum *legal* loan structure and credit underwriting criteria as determined by the authority are met.

~~(d) Loans in the program are used for qualified efficiency and clean energy improvements.~~

(c) *Proceeds of the PACE bonds are used to finance qualified energy and water efficiency and clean energy improvements.*

26122. An applicant shall submit to the authority an application providing a detailed description of the PACE program, a detailed description of the transactional activities associated with the PACE bond issuance, including all transactional costs, and other information deemed necessary by the authority.

1     ~~26123. In evaluating an application, the authority shall consider~~  
2 ~~all of the following factors:~~

3     ~~(a) The use of best practices in underwriting the PACE bond~~  
4 ~~issuance.~~

5     ~~(b) The cost efficiency of the transactional activities in the bond~~  
6 ~~issuance.~~

7     ~~(c) The projected number of jobs created by the PACE program.~~

8     ~~(d) The provision of a guarantee as to the minimum performance~~  
9 ~~of the improvements installed pursuant to the PACE program.~~

10     26123. (a) *In evaluating eligibility, the authority shall consider*  
11 *whether the applicant's PACE program includes the following*  
12 *conditions:*

13         (1) *Loan recipients are legal owners of underlying property.*

14         (2) *Loan recipients are current on mortgage and property tax*  
15 *payments.*

16         (3) *Loan recipients are not in default or in bankruptcy*  
17 *proceedings.*

18         (4) *Loans are for less than 10 percent of the value of the*  
19 *property.*

20         (5) *The property is within the geographical boundaries of the*  
21 *PACE program.*

22     (b) *In evaluating an application, the authority shall consider*  
23 *all of the following factors:*

24         (1) *The use by the PACE program of best practices, adopted by*  
25 *the authority, to qualify eligible properties for participation in*  
26 *underwriting the PACE program.*

27         (2) *The cost efficiency of the applicant's PACE program,*  
28 *including bond issuance.*

29         (3) *The projected number of jobs created by the PACE program.*

30         (4) *The applicant's PACE program requirements for quality*  
31 *assurance and consumer protection as related to achieving*  
32 *efficiency and clean energy production.*

33         (5) *The mechanisms by which savings produced by this program*  
34 *are passed on to the property owners.*

35         (6) *Any other factors deemed appropriate by the authority.*

36     26124. Upon the approval of an application, the authority shall  
37 establish an escrow or similar mechanism, utilizing funds in the  
38 account, to further the purposes of the PACE program.  
39 Unencumbered funds shall be periodically transferred back to the  
40 authority for the purposes of this division.

## CHAPTER 3. PACE RESERVE ACCOUNT AND REPORTING

26140. (a) There is in the California Alternative Energy Authority Fund the PACE Reserve Account. Notwithstanding Section 13340 of the Government Code, the moneys in the account shall be continuously appropriated to the authority solely for the purposes of this division.

(b) Fifty million dollars (\$50,000,000) from ~~the moneys received from the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) for energy-related purposes is hereby, consistent with federal law, transferred to the account.~~ *Renewable Resource Trust Fund is hereby transferred to the account.*

(c) To the extent amounts in the account are not required for current obligations or expenditure, those amounts shall be invested in interest-bearing obligations, and the interest earned shall become part of the account.

(d) Any amount appropriated from the account for purposes other than those specified in this division shall be repaid to the account within one year from that appropriation.

(e) On and after January 1, 2015, any unencumbered amounts in the account shall revert to ~~the original account~~ *Renewable Resource Trust Fund, or its successor.*

26141. On March 31, 2011, and annually thereafter, the authority shall submit to the Legislature a report on all of the following:

(a) The status of the account.

(b) A summary of the PACE bonds that received assistance pursuant to this division.

(c) A summary of the benefits provided by this division, including reduced interest rates on the PACE bonds receiving assistance pursuant to this division.

(d) The number of jobs created by the PACE programs that received assistance pursuant to this division.

(e) Information on energy *and water* savings resulting from the PACE programs that received assistance pursuant to this division.

(f) Other information deemed appropriate by the authority.

SEC. 2. This act addresses the fiscal emergency declared by the Governor by proclamation on January 8, 2010, pursuant to

1 subdivision (f) of Section 10 of Article IV of the California  
2 Constitution.

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